

# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

\* \* \* \* \* C.A. NO. 14-137M  
\*  
WANDA OVALLES, Individually \*  
and as P.P.A., et al \*  
\*  
VS. \* JUNE 9, 2016  
\* 10:00 A.M.  
SONY ELECTRONICS, INC., et al \*  
\*  
\* \* \* \* \* PROVIDENCE, RI

BEFORE THE HONORABLE JOHN J. McCONNELL, JR.,  
DISTRICT JUDGE

(Motion to Compel)

R E D A C T E D

APPEARANCES:

FOR THE PLAINTIFFS: AMATO A. DeLUCA, ESQ.  
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Court Reporter: Karen M. Wischnowsky, RPR-RMR-CRR

1 the Court is inclined with respect to scope, the scope  
2 issue, may help inform the possession, custody or  
3 control argument.

4 The Defendants have narrowed the area in every  
5 one of their pleadings as to where they don't have  
6 possession, custody or control and can't break the seal  
7 on the box in Japan; and that is malfunctions,  
8 complaints and heat incidents. So we take this to mean  
9 the prior incidents of cell failures.

10 So, you know, their position is we don't have  
11 that, and particularly what they've -- can put that  
12 together with the -- their argument in their briefs  
13 that, you know, Look, we're Sony Electronics. We sell  
14 in U.S. and Canada. We've got U.S. and Canada data.  
15 We just don't have data from Europe or Asia. We don't  
16 have that. That's Sony Japan. We don't have it.

17 I mean, in fact, they've given us four  
18 incidents, many of which are not in the United States.  
19 So it's sort of puzzling as to what that means.

20 But in any case, with respect to possession,  
21 custody or control, where Sony Electronics has landed  
22 is, We don't have possession, custody or control of  
23 malfunctions, complaints, heat incidents.

24 What we would ask the Court is to hold off on  
25 deciding that broader issue of the relationship between

1 Sony Electronics and Sony Japan for this reason. We  
2 would ask the Court to recognize the proper scope of  
3 discovery in this case, that is, those  
4 Sony-manufactured 18650 lithium-ion cylindrical cells  
5 back to 2005, give the Plaintiffs the opportunity to  
6 receive from the Defendants the information they do  
7 have about the recalls, about the design, the other UL  
8 reports, whatever they have, and then return to the  
9 question of possession, custody or control because that  
10 production from Sony Electronics will give us view into  
11 what information Sony Electronics had to have to  
12 respond to the recall.

13 And this gets into, your Honor, the --

14 THE COURT: Because you're assuming it will show  
15 you that that includes Sony Japan.

16 MS. WEIZENBAUM: I think so. And if it doesn't,  
17 then so be it; but I think it will give all of us view  
18 into much more information about the true relationship.

19 And that's not a heavy lift for SEL, Sony  
20 Electronics. They've complained about the burden of  
21 production and all of that. We know they've already  
22 responded to the Consumer Products Safety Commission  
23 and provided information.

24 And the reason we know that is because we did a  
25 Freedom of Information Act request to CPSC asking for

1 specifically ask for the documents withheld under  
2 exemptions 3, 4 and 5?

3 MS. WEIZENBAUM: Yes. You mean to CPSC?

4 THE COURT: Correct.

5 MS. WEIZENBAUM: Yes. We appealed this  
6 decision.

7 THE COURT: No, no. Did you subsequently within  
8 this litigation ask Sony to produce that which CPC  
9 would not produce pursuant to those three exemptions?

10 MS. WEIZENBAUM: I believe, yeah. So that is  
11 particularized in the second set of requests; but in  
12 fairness, it is contained within the scope of Wilson  
13 25.

14 THE COURT: Right.

15 MS. WEIZENBAUM: But it is particularized in the  
16 second request, again, in this effort to particularize  
17 so that we can get what we need.

18 The other area, your Honor, that I haven't  
19 covered or there's some particular documents that the  
20 Plaintiffs are seeking in their document requests, I  
21 made reference to the incidents that Sony did -- Sony  
22 Electronics did disclose to the Plaintiffs of heat  
23 events in other countries, and the Plaintiffs are  
24 seeking the underlying documentation concerning that  
25 and haven't received it or if what SEL has produced is

1 all there is, haven't been told that.

2 Another item the Plaintiffs are seeking -- and  
3 this I think, again, speaks to just the maddening  
4 nature of this discovery process.

5 The Plaintiffs -- when we propounded this  
6 discovery two years ago, we had a meet-and-confer with  
7 the Defendants and then decided to commence a  
8 deposition of a person with knowledge of a whole bunch  
9 of topics and thought, you know, we're going to come at  
10 it from two ways and try to get this information while  
11 we do these meet-and-confers.

12 And I would note virtually all the information  
13 that was promised to us in those meet-and-confers was  
14 never provided. I mean, it just was absolutely pulling  
15 teeth, you know.

16 And I don't want to get in the weeds on this;  
17 but, you know, We'll give you new deposition dates. We  
18 never get deposition dates. It's just been maddening.

19 But one example, and it's specific in our  
20 request that's before the Court today, in the -- that  
21 30(b)(6), we did a document request and we asked for  
22 all organizational charts because one interrogatory we  
23 had propounded was who has knowledge of the allegations  
24 and defenses.

25 And, again, all Sony identifies is this single

1 runaway hadn't been worked out. The technical term for  
2 what we now in the case referred to as thermal runaway  
3 is joule heating, J-O-U-L-E. Thermal runaway at that  
4 point was an undefined term. The objection was  
5 properly interposed when it was made, and it should  
6 stand.

7 Our response to that interrogatory which asked  
8 how we designed and manufactured the laptop was that we  
9 did not design and manufacture the laptop. That is a  
10 direct answer to the question that was posed.

11 We did go on and say there are UL reports which  
12 show design and testing, and in response to the  
13 conference that we had -- well, it was a prior  
14 agreement that we had with Miriam and the conference  
15 that we had in your chambers, we've identified further  
16 other documents which would be -- which would show  
17 something relevant to the question.

18 But we can't be faulted for that. We're doing  
19 what we can to provide the Court with the information  
20 that we have because, as I already indicated, we did  
21 not design, we did not manufacture this computer. We  
22 don't have those documents, the primary first-level  
23 documents.

24 THE COURT: You did design and manufacture,  
25 however, the battery, the cells.

1 MR. KELLEHER: No. No, Judge. That was also  
2 done in Japan. In our supplement, we identified the UL  
3 reports which have some design information, testing  
4 information in it. We identified PowerPoints and CPSC  
5 documents.

6 The PowerPoints show the evolution. Essentially  
7 what happened, Judge, in this case is that beginning in  
8 2005 through the end of 2008, Sony implemented many  
9 changes, which we'll get to in more detail in a minute,  
10 regarding the design of their cells and the  
11 manufacturing process of their cells to work on the  
12 issue of thermal runaway.

13 One thing that's important to identify at the  
14 outset, Judge, is that we've never obtained any  
15 documents from anybody in Japan. All the documents  
16 that we produced to date have come from U.S. Sony  
17 Electronics employees.

18 THE COURT: Why are some of them in Japanese,  
19 then?

20 MR. KELLEHER: That's just the way it is, Judge.  
21 Some of them are in Japanese. The document referred to  
22 by Ms. Weizenbaum which is marked SEL 3733, which I can  
23 pass up to the Court, is bilingual. Would you like to  
24 take a look?

25 THE COURT: No. I accept your representation.



1 your discovery so far now if you're now suggesting that  
2 it would be expanding the scope of your response so far  
3 to include all G6G cells?

4 MR. KELLEHER: I'm not suggesting that you do  
5 that, Judge.

6 THE COURT: No, but what subset of all the G6G  
7 cell information have you limited it to to date?

8 MR. KELLEHER: To date, the only thing we  
9 produced, Judge, and again it's 700,000 laptops with  
10 4.2 million cells, would be the EB model laptops. So  
11 it's G6Gs and the EB.

12 And it was the EA, EB, EC were substantially  
13 similar, I think, based on our prior filings; but,  
14 again, as I said, we've gotten past the laptop issue.  
15 We're down to the cells.

16 So in terms of scope, there's nothing before the  
17 Court which would justify any sort of extension of the  
18 scope of discovery past the relevant, then-current  
19 design of the cell.

20 Control is an issue which I thought based on  
21 what I read from the summary submission by the  
22 Plaintiffs, I don't think that was on the table. There  
23 were some --

24 THE COURT: It's still on the table. I think  
25 they're just suggesting that perhaps we defer it to see

1 what's produced depending on what the Court's ruling is  
2 on scope.

3 MR. KELLEHER: Okay. So --

4 THE COURT: That was my understanding.

5 MR. KELLEHER: Yes. Would you like me to  
6 address the issue?

7 THE COURT: You know, any time people agree to  
8 take things off my plate and limit it, I usually am  
9 right there with agreement. So absent your objection  
10 to that proposition by the Plaintiff, it sounds --

11 MR. KELLEHER: That's fine. Just one small  
12 point on the issue, though, Judge. I think  
13 Ms. Weizenbaum indicated that we've drawn a line in  
14 terms of what we say we can't get and it's really just,  
15 you know, the accident data.

16 That's not true at all, and you've seen the  
17 declaration of Ms. Schmalzer. We can't get design  
18 drawings. We can't get -- we can get some design  
19 information to the extent that it was relevant as to  
20 service because we perform service on these things; but  
21 we can't get the general design drawings, we can't get  
22 manufacturing information, we can't get financial  
23 information. There's a universe of things that we  
24 cannot get from --

25 THE COURT: I mean, again, we don't have to go

1       into it now, but the part that caught my eye was the  
2       *Textron* case that you referenced out of the First  
3       Circuit, the *U.S. v. Textron* case where they talk about  
4       the legal right or ability; and then you kept dropping  
5       the word "ability" when you argued it and just stuck to  
6       the legal right.

7               I suppose the question ultimately, if I ever  
8       have to reach it, I'm not sure there's enough that's  
9       before the Court on what Sony Electronics' ability is  
10      to obtain it.

11             I know you've argued legal right, and I  
12      understand that proposition; but I don't know that  
13      there's enough before the Court on its ability to --  
14      other than I think electronically in one fashion you  
15      weren't able to obtain it.

16             MR. KELLEHER: Well, Judge, and I promise I  
17      won't dwell on it, but we have a lot of information in  
18      our original papers on the ability as well.

19             The other point would be the underlying  
20      authority relied upon by *Textron* only dealt with legal  
21      right, not ability.

22             I think there was some discussion about certain  
23      responsive documents, Judge. The request -- there was  
24      some reference that we selectively produced things in  
25      the context of UL reports. We have not done so. We